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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

TIM SEO, individually and on	)	Case No. CV 11-05031 DDP (MRWx)
behalf of all others	)	
similarly situated,	)	
	)	<b>ORDER GRANTING DEFENDANT'S MOTION</b>
Plaintiff,	)	<b>TO DISMISS</b>
	)	
v.	)	
	)	
CC CJV AMERICAN HOLDINGS,	)	
INC., a California	)	[Docket No. 11]
corporation,	)	
	)	
Defendant.	)	

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Presently before the court is Defendant CJV American Holdings, Inc. ("CJV")'s Motion to Dismiss. Having considered the submissions of the parties and heard oral argument, the court grants the motion and adopts the following order.

**I. Background**

CJV owns and operates a movie theater, which opened sometime in mid-2010. (First Amended Complaint ("FAC") ¶¶ 12, 48.) CJV is an active member of the National Association of Theater Owners, a large trade organization. (FAC ¶¶ 35-37.)

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1 On June 5, 2011, Plaintiff purchased movie tickets and used a  
2 debit or credit card to purchase concessions from CJV. (FAC ¶¶ 30-  
3 31.) CJV issued Plaintiff a receipt bearing the expiration date of  
4 Plaintiff's card. (FAC ¶ 32.)

5 Under the Fair and Accurate Credit Transactions Act ("FACTA"),  
6 merchants may not print a credit or debit card's expiration date  
7 upon any receipt provided to the cardholder at the point of sale.  
8 15 U.S.C. § 1681c(g). Plaintiff filed the instant suit against CJV  
9 on behalf of a purported class of consumers who received receipts  
10 bearing credit or debit card expiration dates, alleging that CJV  
11 "negligently and willfully in violation of FACTA. CJV now moves  
12 to dismiss Plaintiff's complaint.

## 13 **II. Legal Standard**

14 A complaint will survive a motion to dismiss when it  
15 "contain[s] sufficient factual matter, accepted as true, to state a  
16 claim to relief that is plausible on its face." Ashcroft v. Iqbal,  
17 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atl. Corp. v. Twombly,  
18 550 U.S. 544, 570 (2007)). When considering a Rule 12(b)(6)  
19 motion, a court must "accept as true all allegations of material  
20 fact and must construe those facts in the light most favorable to  
21 the plaintiff." Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir.  
22 2000). Although a complaint need not include "detailed factual  
23 allegations," it must offer "more than an unadorned,  
24 the-defendant-unlawfully-harmed-me accusation." Iqbal, 129 S. Ct.  
25 at 1949. Conclusory allegations or allegations that are no more  
26 than a statement of a legal conclusion "are not entitled to the  
27 assumption of truth." Id. at 1950. In other words, a pleading that  
28 merely offers "labels and conclusions," a "formulaic recitation of

1 the elements," or "naked assertions" will not be sufficient to  
2 state a claim upon which relief can be granted. Id. at 1949  
3 (citations and internal quotation marks omitted).

4 "When there are well-pleaded factual allegations, a court should  
5 assume their veracity and then determine whether they plausibly  
6 give rise to an entitlement of relief." Id. at 1950. Plaintiffs  
7 must allege "plausible grounds to infer" that their claims rise  
8 "above the speculative level." Twombly, 550 U.S. at 555-56.  
9 "Determining whether a complaint states a plausible claim for  
10 relief" is "a context-specific task that requires the reviewing  
11 court to draw on its judicial experience and common sense." Iqbal,  
12 129 S. Ct. at 1950.

### 13 **III. Discussion**

14 FACTA imposes civil liability for willful noncompliance and  
15 negligent noncompliance. 15 U.S.C. §§ 1681n(a), 1681o(a).  
16 "Willfulness" encompasses both knowing conduct and reckless  
17 conduct. Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47, 57 (2007).  
18 Here, CJV argues that Plaintiff has failed to allege a knowing or  
19 reckless violation of FACTA. The court agrees.

20 Plaintiff's allegations with respect to CJV's knowledge of,  
21 and disregard for, FACTA's provisions center on CJV's membership in  
22 the National Association of Theater Owners ("Association"). The  
23 complaint alleges that the Association communicates legal news to  
24 its members. (FAC ¶ 37.) The FAC alleges that one such update,  
25 published in 2007, describes the impact of FACTA on the movie  
26 theater industry. (FAC ¶ 42.) The complaint further alleges that  
27 a list of "talking points" regarding FACTA is available on the  
28

1 Association's web site, and that CJV employees "regularly access"  
2 the Association web site. (FAC ¶¶ 43-44.)

3 On the basis of these allegations, Plaintiff jumps to the  
4 conclusion that the Association "repeatedly informed" CJV of  
5 FACTA's requirements, that CJV "was notified of the Act and its  
6 requirements throughout the entire period of time in which it  
7 failed to comply with FACTA," and that CJV "ignored" the  
8 Association's communications and proceeded to "knowingly and  
9 intentionally" violate FACTA. (FAC ¶¶ 45, 51-52.) These  
10 conclusory assertions, however, are unsupported by any pled facts.  
11 The Association's 2007 update regarding FACTA was published three  
12 years before CJV opened its movie theater, and Plaintiff has not  
13 alleged that CJV saw the update at any point. Similarly, Plaintiff  
14 merely alleges that CJV employees accessed the Association website,  
15 without ever alleging that CJV ever actually saw the FACTA "talking  
16 points" web page. The fact that information about FACTA was  
17 available to CJV does nothing to support Defendant's naked  
18 assertion that CJV was notified of FACTA's provisions and knowingly  
19 ignored them.<sup>1</sup> Plaintiff has, therefore, failed to adequately  
20 plead a willful violation of FACTA.

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23 <sup>1</sup> Contrary to Plaintiff's arguments, this case is not similar  
24 to Zahn v. Tuttle, Inc., 2011 WL 1741912 (D.Minn. May 4, 2011), the  
25 only post-Iqbal case cited by Plaintiff. In Zahn, the court denied  
26 a motion to dismiss where a plaintiff alleging a FACTA violation  
27 alleged that the defendant received specific information regarding  
28 FACTA, employed a third party FACTA compliance manager, then  
canceled its contract with the compliance manager when informed  
that equipment changes would be necessary to ensure compliance with  
FACTA. There are no allegations of similar actual notice, let  
alone willful noncompliance, here.

1 CJV also argues that Plaintiff has failed to adequately plead  
2 a claim for negligent violation of FACTA. (Motion at 6.) Under 15  
3 U.S.C. 1681o(a), a plaintiff alleging a negligent violation may  
4 only recover actual damages. Plaintiff, however, has not alleged  
5 that he suffered any actual damages as a result of CJV's actions  
6 beyond the bare assertion that "actual damages are present and  
7 quantifiable."<sup>2</sup> (FAC ¶ 73.) Though Plaintiff seeks "an award of  
8 actual damages for injuries caused by [CJV's] unlawful conduct,"  
9 the FAC makes no mention of any such injuries. Furthermore,  
10 Plaintiff's opposition to CJV's motion to dismiss makes no  
11 reference to his negligence cause of action. Accordingly,  
12 Plaintiff's negligence cause of action is also dismissed.

13 **IV. Conclusion**

14 For the reasons stated above, Defendant CJV's Motion to  
15 Dismiss is GRANTED.

16  
17 IT IS SO ORDERED.

18  
19  
20 Dated: October 18, 2011

  
DEAN D. PREGERSON  
United States District Judge

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26 \_\_\_\_\_  
27 <sup>2</sup> Plaintiff appears to have focused on the statutory damages  
28 available for willful violations under 15 U.S.C. 1681n(a): "Actual  
damages are present and quantifiable; however, Plaintiff is not  
required to prove actual damages to obtain the statutory damages .  
. . ." (FAC ¶ 73.)